

AMENDED IN SENATE APRIL 12, 2010

AMENDED IN SENATE MARCH 24, 2010

SENATE BILL

No. 1195

Introduced by Senator Wyland

February 18, 2010

An act to amend ~~Section 288~~ Sections 208, 220, 264, 264.1, 269, 286, 288, 288a, 288.5, and 289 of the Penal Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 1195, as amended, Wyland. Sex offenders: ~~lewd and lascivious acts; punishment.~~

Existing law provides punishments for sex crimes.

This bill would change the punishment for various sex crimes from a determinate sentence to an indeterminate sentence with a life term, as specified. The bill would require the court to impose any applicable enhancements consecutive to the life term for these crimes. Because this bill would change the penalty for certain sex crimes, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law makes it a felony punishable by imprisonment in the state prison for 3, 6, or 8 years for any person to willfully and lewdly commit any lewd or lascivious act upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with~~

~~the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.~~

~~This bill would instead make the crime above punishable by imprisonment in the state prison for 10 years to life.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 208 of the Penal Code is amended to
2 read:

3 208. (a) Kidnapping is punishable by imprisonment in the
4 state prison for three, five, or eight years.

5 (b) *Notwithstanding any other provision in this section,*
6 *kidnapping committed with the intent to violate Section 261, 286,*
7 *288, 288a, or 289 is punishable by imprisonment in the state prison*
8 *for three years to life, five years to life, or eight years to life. The*
9 *court shall impose any applicable enhancements consecutive to*
10 *the life term.*

11 (c) *Notwithstanding any other provision in this section,*
12 *kidnapping as defined in subdivision (b) of Section 207 is*
13 *punishable by imprisonment in the state prison for five years to*
14 *life, eight years to life, or eleven years to life. The court shall*
15 *impose any applicable enhancements consecutive to the life term.*

16 ~~(b)~~

17 (d) If the person kidnapped is under 14 years of age at the time
18 of the commission of the crime, the kidnapping is punishable by
19 imprisonment in the state prison for 5, 8, or 11 years. This
20 subdivision is not applicable to the taking, detaining, or concealing,
21 of a minor child by a biological parent, a natural father, as specified
22 in Section 7611 of the Family Code, an adoptive parent, or a person
23 who has been granted access to the minor child by a court order.

24 ~~(e)~~

25 (e) In all cases in which probation is granted, the court shall,
26 except in unusual cases where the interests of justice would best
27 be served by a lesser penalty, require as a condition of the probation
28 that the person be confined in the county jail for 12 months. If the
29 court grants probation without requiring the defendant to be

1 confined in the county jail for 12 months, it shall specify its reason
2 or reasons for imposing a lesser penalty.

3 *SEC. 2. Section 220 of the Penal Code is amended to read:*

4 220. (a) Except as provided in subdivision (b), any person
5 who assaults another with intent to commit mayhem, rape, sodomy,
6 oral copulation, or any violation of Section 264.1, 288, or 289 shall
7 be punished by imprisonment in the state prison for two *years to*
8 *life*, four *years to life*, or six *years to life*. *The court shall impose*
9 *any applicable enhancements consecutive to the life term.*

10 (b) Any person who, in the commission of a burglary of the first
11 degree, as defined in subdivision (a) of Section 460, assaults
12 another with intent to commit rape, sodomy, oral copulation, or
13 any violation of Section 264.1, 288, or 289 shall be punished by
14 imprisonment in the state prison for life with the possibility of
15 parole.

16 *SEC. 3. Section 264 of the Penal Code is amended to read:*

17 264. (a) Rape, as defined in Section 261 or 262, is punishable
18 by imprisonment in the state prison for three *years to life*, six *years*
19 *to life*, or eight *years to life*. *The court shall impose any applicable*
20 *enhancements consecutive to the life term.*

21 (b) In addition to any punishment imposed under this section
22 the judge may assess a fine not to exceed seventy dollars (\$70)
23 against any person who violates Section 261 or 262 with the
24 proceeds of this fine to be used in accordance with Section 1463.23.
25 The court shall, however, take into consideration the defendant's
26 ability to pay, and no defendant shall be denied probation because
27 of his or her inability to pay the fine permitted under this
28 subdivision.

29 *SEC. 4. Section 264.1 of the Penal Code is amended to read:*

30 264.1. The provisions of Section 264 notwithstanding, in any
31 case in which the defendant, voluntarily acting in concert with
32 another person, by force or violence and against the will of the
33 victim, committed an act described in Section 261, 262, or 289,
34 either personally or by aiding and abetting the other person, that
35 fact shall be charged in the indictment or information and if found
36 to be true by the jury, upon a jury trial, or if found to be true by
37 the court, upon a court trial, or if admitted by the defendant, the
38 defendant shall suffer confinement in the state prison for five *years*
39 *to life*, seven *years to life*, or nine *years to life*. *The court shall*
40 *impose any applicable enhancements consecutive to the life term.*

1 *SEC. 5. Section 269 of the Penal Code is amended to read:*

2 269. (a) Any person who commits any of the following acts
3 upon a child who is under 14 years of age and seven or more years
4 younger than the person is guilty of aggravated sexual assault of
5 a child:

6 (1) Rape, in violation of paragraph (2) or (6) of subdivision (a)
7 of Section 261.

8 (2) Rape or sexual penetration, in concert, in violation of Section
9 264.1.

10 (3) Sodomy, in violation of paragraph (2) or (3) of subdivision
11 (c), or subdivision (d), of Section 286.

12 (4) Oral copulation, in violation of paragraph (2) or (3) of
13 subdivision (c), or subdivision (d), of Section 288a.

14 (5) Sexual penetration, in violation of subdivision (a) of Section
15 289.

16 (b) Any person who violates this section is guilty of a felony
17 and shall be punished by imprisonment in the state prison for ~~15~~
18 ~~years to~~ life *without the possibility of parole*.

19 (c) The court shall impose a consecutive sentence for each
20 offense that results in a conviction under this section if the crimes
21 involve separate victims or involve the same victim on separate
22 occasions as defined in subdivision (d) of Section 667.6.

23 *SEC. 6. Section 286 of the Penal Code is amended to read:*

24 286. (a) Sodomy is sexual conduct consisting of contact
25 between the penis of one person and the anus of another person.
26 Any sexual penetration, however slight, is sufficient to complete
27 the crime of sodomy.

28 (b) (1) Except as provided in Section 288, any person who
29 participates in an act of sodomy with another person who is under
30 18 years of age shall be punished by imprisonment in the state
31 prison, or in a county jail for not more than one year.

32 (2) Except as provided in Section 288, any person over the age
33 of 21 years who participates in an act of sodomy with another
34 person who is under 16 years of age shall be guilty of a felony.

35 (c) (1) Any person who participates in an act of sodomy with
36 another person who is under 14 years of age and more than 10
37 years younger than he or she shall be punished by imprisonment
38 in the state prison for three, six, or eight years.

39 (2) Any person who commits an act of sodomy when the act is
40 accomplished against the victim's will by means of force, violence,

1 duress, menace, or fear of immediate and unlawful bodily injury
2 on the victim or another person shall be punished by imprisonment
3 in the state prison for three *years to life*, six *years to life*, or eight
4 years *eight years to life*. *The court shall impose any applicable*
5 *enhancements consecutive to the life term.*

6 (3) Any person who commits an act of sodomy where the act
7 is accomplished against the victim's will by threatening to retaliate
8 in the future against the victim or any other person, and there is a
9 reasonable possibility that the perpetrator will execute the threat,
10 shall be punished by imprisonment in the state prison for three
11 *years to life*, six *years to life*, or eight *years to life*. *The court shall*
12 *impose any applicable enhancements consecutive to the life term.*

13 (d) Any person who, while voluntarily acting in concert with
14 another person, either personally or aiding and abetting that other
15 person, commits an act of sodomy when the act is accomplished
16 against the victim's will by means of force or fear of immediate
17 and unlawful bodily injury on the victim or another person or
18 where the act is accomplished against the victim's will by
19 threatening to retaliate in the future against the victim or any other
20 person, and there is a reasonable possibility that the perpetrator
21 will execute the threat, shall be punished by imprisonment in the
22 state prison for five *years to life*, seven *years to life*, or nine years
23 *to life*. *The court shall impose any applicable enhancements*
24 *consecutive to the life term.*

25 (e) Any person who participates in an act of sodomy with any
26 person of any age while confined in any state prison, as defined
27 in Section 4504, or in any local detention facility, as defined in
28 Section 6031.4, shall be punished by imprisonment in the state
29 prison, or in a county jail for not more than one year.

30 (f) Any person who commits an act of sodomy, and the victim
31 is at the time unconscious of the nature of the act and this is known
32 to the person committing the act, shall be punished by
33 imprisonment in the state prison for three *years to life*, six *years*
34 *to life*, or eight *years to life*. *The court shall impose any applicable*
35 *enhancements consecutive to the life term.* As used in this
36 subdivision, "unconscious of the nature of the act" means incapable
37 of resisting because the victim meets one of the following
38 conditions:

39 (1) Was unconscious or asleep.

1 (2) Was not aware, knowing, perceiving, or cognizant that the
2 act occurred.

3 (3) Was not aware, knowing, perceiving, or cognizant of the
4 essential characteristics of the act due to the perpetrator's fraud in
5 fact.

6 (4) Was not aware, knowing, perceiving, or cognizant of the
7 essential characteristics of the act due to the perpetrator's fraudulent
8 representation that the sexual penetration served a professional
9 purpose when it served no professional purpose.

10 (g) Except as provided in subdivision (h), a person who commits
11 an act of sodomy, and the victim is at the time incapable, because
12 of a mental disorder or developmental or physical disability, of
13 giving legal consent, and this is known or reasonably should be
14 known to the person committing the act, shall be punished by
15 imprisonment in the state prison for three *years to life*, six *years*
16 *to life*, or eight *years to life*. *The court shall impose any applicable*
17 *enhancements consecutive to the life term*. Notwithstanding the
18 existence of a conservatorship pursuant to the
19 Lanterman-Petris-Short Act (Part 1 (commencing with Section
20 5000) of Division 5 of the Welfare and Institutions Code), the
21 prosecuting attorney shall prove, as an element of the crime, that
22 a mental disorder or developmental or physical disability rendered
23 the alleged victim incapable of giving consent.

24 (h) Any person who commits an act of sodomy, and the victim
25 is at the time incapable, because of a mental disorder or
26 developmental or physical disability, of giving legal consent, and
27 this is known or reasonably should be known to the person
28 committing the act, and both the defendant and the victim are at
29 the time confined in a state hospital for the care and treatment of
30 the mentally disordered or in any other public or private facility
31 for the care and treatment of the mentally disordered approved by
32 a county mental health director, shall be punished by imprisonment
33 in the state prison, or in a county jail for not more than one year.
34 Notwithstanding the existence of a conservatorship pursuant to
35 the Lanterman-Petris-Short Act (Part 1 (commencing with Section
36 5000) of Division 5 of the Welfare and Institutions Code), the
37 prosecuting attorney shall prove, as an element of the crime, that
38 a mental disorder or developmental or physical disability rendered
39 the alleged victim incapable of giving legal consent.

(i) Any person who commits an act of sodomy, where the victim is prevented from resisting by an intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for three *years to life*, six *years to life*, or eight *years to life*. *The court shall impose any applicable enhancements consecutive to the life term.*

(j) Any person who commits an act of sodomy, where the victim submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for three, six, or eight years.

(k) Any person who commits an act of sodomy, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(l) As used in subdivisions (c) and (d), "threatening to retaliate" means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury, or death.

(m) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23. The court, however, shall take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 7. Section 288 of the Penal Code is amended to read:

288. (a) Any person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of

1 a felony and shall be punished by imprisonment in the state prison
2 for three *years to life*, six *years to life*, or eight *years to life*. *The*
3 *court shall impose any applicable enhancements consecutive to*
4 *the life term.*

5 (b) (1) Any person who commits an act described in subdivision
6 (a) by use of force, violence, duress, menace, or fear of immediate
7 and unlawful bodily injury on the victim or another person, is
8 guilty of a felony and shall be punished by imprisonment in the
9 state prison for three *years to life*, six *years to life*, or eight *years*
10 *to life. The court shall impose any applicable enhancements*
11 *consecutive to the life term.*

12 (2) Any person who is a caretaker and commits an act described
13 in subdivision (a) upon a dependent person by use of force,
14 violence, duress, menace, or fear of immediate and unlawful bodily
15 injury on the victim or another person, with the intent described
16 in subdivision (a), is guilty of a felony and shall be punished by
17 imprisonment in the state prison for three *years to life*, six *years*
18 *to life*, or eight *years to life. The court shall impose any applicable*
19 *enhancements consecutive to the life term.*

20 (c) (1) Any person who commits an act described in subdivision
21 (a) with the intent described in that subdivision, and the victim is
22 a child of 14 or 15 years, and that person is at least 10 years older
23 than the child, is guilty of a public offense and shall be punished
24 by imprisonment in the state prison for one, two, or three years,
25 or by imprisonment in a county jail for not more than one year. In
26 determining whether the person is at least 10 years older than the
27 child, the difference in age shall be measured from the birth date
28 of the person to the birth date of the child.

29 (2) Any person who is a caretaker and commits an act described
30 in subdivision (a) upon a dependent person, with the intent
31 described in subdivision (a), is guilty of a public offense and shall
32 be punished by imprisonment in the state prison for one, two, or
33 three years, or by imprisonment in a county jail for not more than
34 one year.

35 (d) In any arrest or prosecution under this section or Section
36 288.5, the peace officer, district attorney, and the court shall
37 consider the needs of the child victim or dependent person and
38 shall do whatever is necessary, within existing budgetary resources,
39 and constitutionally permissible to prevent psychological harm to

1 the child victim or to prevent psychological harm to the dependent
2 person victim resulting from participation in the court process.

3 (e) Upon the conviction of any person for a violation of
4 subdivision (a) or (b), the court may, in addition to any other
5 penalty or fine imposed, order the defendant to pay an additional
6 fine not to exceed ten thousand dollars (\$10,000). In setting the
7 amount of the fine, the court shall consider any relevant factors,
8 including, but not limited to, the seriousness and gravity of the
9 offense, the circumstances of its commission, whether the
10 defendant derived any economic gain as a result of the crime, and
11 the extent to which the victim suffered economic losses as a result
12 of the crime. Every fine imposed and collected under this section
13 shall be deposited in the Victim-Witness Assistance Fund to be
14 available for appropriation to fund child sexual exploitation and
15 child sexual abuse victim counseling centers and prevention
16 programs pursuant to Section 13837.

17 If the court orders a fine imposed pursuant to this subdivision,
18 the actual administrative cost of collecting that fine, not to exceed
19 2 percent of the total amount paid, may be paid into the general
20 fund of the county treasury for the use and benefit of the county.

21 (f) For purposes of paragraph (2) of subdivision (b) and
22 paragraph (2) of subdivision (c), the following definitions apply:

23 (1) “Caretaker” means an owner, operator, administrator,
24 employee, independent contractor, agent, or volunteer of any of
25 the following public or private facilities when the facilities provide
26 care for elder or dependent persons:

27 (A) Twenty-four hour health facilities, as defined in Sections
28 1250, 1250.2, and 1250.3 of the Health and Safety Code.

29 (B) Clinics.

30 (C) Home health agencies.

31 (D) Adult day health care centers.

32 (E) Secondary schools that serve dependent persons and
33 postsecondary educational institutions that serve dependent persons
34 or elders.

35 (F) Sheltered workshops.

36 (G) Camps.

37 (H) Community care facilities, as defined by Section 1402 of
38 the Health and Safety Code, and residential care facilities for the
39 elderly, as defined in Section 1569.2 of the Health and Safety
40 Code.

- 1 (I) Respite care facilities.
- 2 (J) Foster homes.
- 3 (K) Regional centers for persons with developmental disabilities.
- 4 (L) A home health agency licensed in accordance with Chapter
- 5 8 (commencing with Section 1725) of Division 2 of the Health
- 6 and Safety Code.
- 7 (M) An agency that supplies in-home supportive services.
- 8 (N) Board and care facilities.
- 9 (O) Any other protective or public assistance agency that
- 10 provides health services or social services to elder or dependent
- 11 persons, including, but not limited to, in-home supportive services,
- 12 as defined in Section 14005.14 of the Welfare and Institutions
- 13 Code.
- 14 (P) Private residences.
- 15 (2) “Board and care facilities” means licensed or unlicensed
- 16 facilities that provide assistance with one or more of the following
- 17 activities:
- 18 (A) Bathing.
- 19 (B) Dressing.
- 20 (C) Grooming.
- 21 (D) Medication storage.
- 22 (E) Medical dispensation.
- 23 (F) Money management.
- 24 (3) “Dependent person” means any person who has a physical
- 25 or mental impairment that substantially restricts his or her ability
- 26 to carry out normal activities or to protect his or her rights,
- 27 including, but not limited to, persons who have physical or
- 28 developmental disabilities or whose physical or mental abilities
- 29 have significantly diminished because of age. “Dependent person”
- 30 includes any person who is admitted as an inpatient to a 24-hour
- 31 health facility, as defined in Sections 1250, 1250.2, and 1250.3 of
- 32 the Health and Safety Code.
- 33 (g) Paragraph (2) of subdivision (b) and paragraph (2) of
- 34 subdivision (c) apply to the owners, operators, administrators,
- 35 employees, independent contractors, agents, or volunteers working
- 36 at these public or private facilities and only to the extent that the
- 37 individuals personally commit, conspire, aid, abet, or facilitate any
- 38 act prohibited by paragraph (2) of subdivision (b) and paragraph
- 39 (2) of subdivision (c).

1 (h) Paragraph (2) of subdivision (b) and paragraph (2) of
2 subdivision (c) do not apply to a caretaker who is a spouse of, or
3 who is in an equivalent domestic relationship with, the dependent
4 person under care.

5 *SEC. 8. Section 288a of the Penal Code is amended to read:*

6 288a. (a) Oral copulation is the act of copulating the mouth
7 of one person with the sexual organ or anus of another person.

8 (b) (1) Except as provided in Section 288, any person who
9 participates in an act of oral copulation with another person who
10 is under 18 years of age shall be punished by imprisonment in the
11 state prison, or in a county jail for a period of not more than one
12 year.

13 (2) Except as provided in Section 288, any person over the age
14 of 21 years who participates in an act of oral copulation with
15 another person who is under 16 years of age is guilty of a felony.

16 (c) (1) Any person who participates in an act of oral copulation
17 with another person who is under 14 years of age and more than
18 10 years younger than he or she shall be punished by imprisonment
19 in the state prison for three *years to life*, six *years to life*, or eight
20 *years to life*. *The court shall impose any applicable enhancements*
21 *consecutive to the life term.*

22 (2) Any person who commits an act of oral copulation when
23 the act is accomplished against the victim's will by means of force,
24 violence, duress, menace, or fear of immediate and unlawful bodily
25 injury on the victim or another person shall be punished by
26 imprisonment in the state prison for three *years to life*, six *years*
27 *to life*, or eight *years to life*. *The court shall impose any applicable*
28 *enhancements consecutive to the life term.*

29 (3) Any person who commits an act of oral copulation where
30 the act is accomplished against the victim's will by threatening to
31 retaliate in the future against the victim or any other person, and
32 there is a reasonable possibility that the perpetrator will execute
33 the threat, shall be punished by imprisonment in the state prison
34 for three *years to life*, six *years to life*, or eight *years to life*. *The*
35 *court shall impose any applicable enhancements consecutive to*
36 *the life term.*

37 (d) Any person who, while voluntarily acting in concert with
38 another person, either personally or by aiding and abetting that
39 other person, commits an act of oral copulation (1) when the act
40 is accomplished against the victim's will by means of force or fear

1 of immediate and unlawful bodily injury on the victim or another
2 person, or (2) where the act is accomplished against the victim's
3 will by threatening to retaliate in the future against the victim or
4 any other person, and there is a reasonable possibility that the
5 perpetrator will execute the threat, or (3) where the victim is at the
6 time incapable, because of a mental disorder or developmental or
7 physical disability, of giving legal consent, and this is known or
8 reasonably should be known to the person committing the act,
9 shall be punished by imprisonment in the state prison for five years
10 to life, seven years to life, or nine years to life. *The court shall*
11 *impose any applicable enhancements consecutive to the life term.*
12 Notwithstanding the appointment of a conservator with respect to
13 the victim pursuant to the provisions of the Lanterman-Petris-Short
14 Act (Part 1 (commencing with Section 5000) of Division 5 of the
15 Welfare and Institutions Code), the prosecuting attorney shall
16 prove, as an element of the crime described under paragraph (3),
17 that a mental disorder or developmental or physical disability
18 rendered the alleged victim incapable of giving legal consent.

19 (e) Any person who participates in an act of oral copulation
20 while confined in any state prison, as defined in Section 4504 or
21 in any local detention facility as defined in Section 6031.4, shall
22 be punished by imprisonment in the state prison, or in a county
23 jail for a period of not more than one year.

24 (f) Any person who commits an act of oral copulation *and the*
25 *victim is at the time unconscious of the nature of the act, as*
26 *specified in paragraph (1) or (2), and this is known to the person*
27 *committing the act, shall be punished by imprisonment in the state*
28 *prison for three years to life, six years to life, or eight years to life.*
29 *The court shall impose any applicable enhancements consecutive*
30 *to the life term. Any person who commits an act of oral copulation,*
31 and the victim is at the time unconscious of the nature of the act,
32 *as specified in paragraph (3) or (4), and this is known to the person*
33 committing the act, shall be punished by imprisonment in the state
34 prison for a period of three, six, or eight years. As used in this
35 subdivision, "unconscious of the nature of the act" means incapable
36 of resisting because the victim meets one of the following
37 conditions:

38 (1) Was unconscious or asleep.

39 (2) Was not aware, knowing, perceiving, or cognizant that the
40 act occurred.

1 (3) Was not aware, knowing, perceiving, or cognizant of the
2 essential characteristics of the act due to the perpetrator's fraud in
3 fact.

4 (4) Was not aware, knowing, perceiving, or cognizant of the
5 essential characteristics of the act due to the perpetrator's fraudulent
6 representation that the oral copulation served a professional purpose
7 when it served no professional purpose.

8 (g) Except as provided in subdivision (h), any person who
9 commits an act of oral copulation, and the victim is at the time
10 incapable, because of a mental disorder or developmental or
11 physical disability, of giving legal consent, and this is known or
12 reasonably should be known to the person committing the act,
13 shall be punished by imprisonment in the state prison, for three
14 *years to life*, six *years to life*, or eight *years to life*. *The court shall*
15 *impose any applicable enhancements consecutive to the life term*.
16 Notwithstanding the existence of a conservatorship pursuant to
17 the provisions of the Lanterman-Petris-Short Act (Part 1
18 (commencing with Section 5000) of Division 5 of the Welfare and
19 Institutions Code), the prosecuting attorney shall prove, as an
20 element of the crime, that a mental disorder or developmental or
21 physical disability rendered the alleged victim incapable of giving
22 consent.

23 (h) Any person who commits an act of oral copulation, and the
24 victim is at the time incapable, because of a mental disorder or
25 developmental or physical disability, of giving legal consent, and
26 this is known or reasonably should be known to the person
27 committing the act, and both the defendant and the victim are at
28 the time confined in a state hospital for the care and treatment of
29 the mentally disordered or in any other public or private facility
30 for the care and treatment of the mentally disordered approved by
31 a county mental health director, shall be punished by imprisonment
32 in the state prison, or in a county jail for a period of not more than
33 one year. Notwithstanding the existence of a conservatorship
34 pursuant to the provisions of the Lanterman-Petris-Short Act (Part
35 1 (commencing with Section 5000) of Division 5 of the Welfare
36 and Institutions Code), the prosecuting attorney shall prove, as an
37 element of the crime, that a mental disorder or developmental or
38 physical disability rendered the alleged victim incapable of giving
39 legal consent.

(i) Any person who commits an act of oral copulation, where the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for a period of three *years to life*, six *years to life*, or eight *years to life*. *The court shall impose any applicable enhancements consecutive to the life term.*

(j) Any person who commits an act of oral copulation, where the victim submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(k) Any person who commits an act of oral copulation, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(l) As used in subdivisions (c) and (d), "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(m) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 9. Section 288.5 of the Penal Code is amended to read:

288.5. (a) Any person who either resides in the same home with the minor child or has recurring access to the child, who over a period of time, not less than three months in duration, engages in three or more acts of substantial sexual conduct with a child

1 under the age of 14 years at the time of the commission of the
2 offense, as defined in subdivision (b) of Section 1203.066, or three
3 or more acts of lewd or lascivious conduct, as defined in Section
4 288, with a child under the age of 14 years at the time of the
5 commission of the offense is guilty of the offense of continuous
6 sexual abuse of a child and shall be punished by imprisonment in
7 the state prison for a term of ~~6, 12, or 16 years~~ *six years to life, 12*
8 *years to life, or 16 years to life. The court shall impose any*
9 *applicable enhancements consecutive to the life term.*

10 (b) To convict under this section the trier of fact, if a jury, need
11 unanimously agree only that the requisite number of acts occurred
12 not on which acts constitute the requisite number.

13 (c) No other act of substantial sexual conduct, as defined in
14 subdivision (b) of Section 1203.066, with a child under 14 years
15 of age at the time of the commission of the offenses, or lewd and
16 lascivious acts, as defined in Section 288, involving the same
17 victim may be charged in the same proceeding with a charge under
18 this section unless the other charged offense occurred outside the
19 time period charged under this section or the other offense is
20 charged in the alternative. A defendant may be charged with only
21 one count under this section unless more than one victim is
22 involved in which case a separate count may be charged for each
23 victim.

24 *SEC. 10. Section 289 of the Penal Code is amended to read:*

25 289. (a) (1) Any person who commits an act of sexual
26 penetration when the act is accomplished against the victim's will
27 by means of force, violence, duress, menace, or fear of immediate
28 and unlawful bodily injury on the victim or another person shall
29 be punished by imprisonment in the state prison for three *years to*
30 *life, six years to life, or eight years to life. The court shall impose*
31 *any applicable enhancements consecutive to the life term.*

32 (2) Any person who commits an act of sexual penetration when
33 the act is accomplished against the victim's will by threatening to
34 retaliate in the future against the victim or any other person, and
35 there is a reasonable possibility that the perpetrator will execute
36 the threat, shall be punished by imprisonment in the state prison
37 for three *years to life, six years to life, or eight years to life. The*
38 *court shall impose any applicable enhancements consecutive to*
39 *the life term.*

(b) Except as provided in subdivision (c), any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three *years to life*, six *years to life*, or eight *years to life*. *The court shall impose any applicable enhancements consecutive to the life term.* Notwithstanding the appointment of a conservator with respect to the victim pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(c) Any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(d) Any person who commits an act of sexual penetration *and the victim is at the time unconscious of the nature of the act, as specified in paragraph (1) or (2), and this is known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three years to life, six years to life, or eight years to life. The court shall impose any applicable enhancements consecutive to the life term. Any*

1 *person who commits an act of sexual penetration*, and the victim
2 is at the time unconscious of the nature of the act, *as specified in*
3 *paragraph (3) or (4)*, and this is known to the person committing
4 the act or causing the act to be committed, shall be punished by
5 imprisonment in the state prison for three, six, or eight years. As
6 used in this subdivision, “unconscious of the nature of the act”
7 means incapable of resisting because the victim meets one of the
8 following conditions:

9 (1) Was unconscious or asleep.

10 (2) Was not aware, knowing, perceiving, or cognizant that the
11 act occurred.

12 (3) Was not aware, knowing, perceiving, or cognizant of the
13 essential characteristics of the act due to the perpetrator’s fraud in
14 fact.

15 (4) Was not aware, knowing, perceiving, or cognizant of the
16 essential characteristics of the act due to the perpetrator’s fraudulent
17 representation that the sexual penetration served a professional
18 purpose when it served no professional purpose.

19 (e) Any person who commits an act of sexual penetration when
20 the victim is prevented from resisting by any intoxicating or
21 anesthetic substance, or any controlled substance, and this condition
22 was known, or reasonably should have been known by the accused,
23 shall be punished by imprisonment in the state prison for a period
24 of *three years to life*, *six years to life*, or *eight years to life*. *The*
25 *court shall impose any applicable enhancements consecutive to*
26 *the life term*.

27 (f) Any person who commits an act of sexual penetration when
28 the victim submits under the belief that the person committing the
29 act or causing the act to be committed is the victim’s spouse, and
30 this belief is induced by any artifice, pretense, or concealment
31 practiced by the accused, with intent to induce the belief, shall be
32 punished by imprisonment in the state prison for a period of three,
33 six, or eight years.

34 (g) Any person who commits an act of sexual penetration when
35 the act is accomplished against the victim’s will by threatening to
36 use the authority of a public official to incarcerate, arrest, or deport
37 the victim or another, and the victim has a reasonable belief that
38 the perpetrator is a public official, shall be punished by
39 imprisonment in the state prison for a period of three, six, or eight
40 years.

1 As used in this subdivision, “public official” means a person
2 employed by a governmental agency who has the authority, as part
3 of that position, to incarcerate, arrest, or deport another. The
4 perpetrator does not actually have to be a public official.

5 (h) Except as provided in Section 288, any person who
6 participates in an act of sexual penetration with another person
7 who is under 18 years of age shall be punished by imprisonment
8 in the state prison or in the county jail for a period of not more
9 than one year.

10 (i) Except as provided in Section 288, any person over the age
11 of 21 years who participates in an act of sexual penetration with
12 another person who is under 16 years of age shall be guilty of a
13 felony.

14 (j) Any person who participates in an act of sexual penetration
15 with another person who is under 14 years of age and who is more
16 than 10 years younger than he or she shall be punished by
17 imprisonment in the state prison for three *years to life*, six *years*
18 *to life*, or eight *years to life*. *The court shall impose any applicable*
19 *enhancements consecutive to the life term.*

20 (k) As used in this section:

21 (1) “Sexual penetration” is the act of causing the penetration,
22 however slight, of the genital or anal opening of any person or
23 causing another person to so penetrate the defendant’s or another
24 person’s genital or anal opening for the purpose of sexual arousal,
25 gratification, or abuse by any foreign object, substance, instrument,
26 or device, or by any unknown object.

27 (2) “Foreign object, substance, instrument, or device” shall
28 include any part of the body, except a sexual organ.

29 (3) “Unknown object” shall include any foreign object,
30 substance, instrument, or device, or any part of the body, including
31 a penis, when it is not known whether penetration was by a penis
32 or by a foreign object, substance, instrument, or device, or by any
33 other part of the body.

34 (l) As used in subdivision (a), “threatening to retaliate” means
35 a threat to kidnap or falsely imprison, or inflict extreme pain,
36 serious bodily injury or death.

37 (m) As used in this section, “victim” includes any person who
38 the defendant causes to penetrate the genital or anal opening of
39 the defendant or another person or whose genital or anal opening
40 is caused to be penetrated by the defendant or another person and

1 who otherwise qualifies as a victim under the requirements of this
2 section.

3 *SEC. 11. No reimbursement is required by this act pursuant*
4 *to Section 6 of Article XIII B of the California Constitution because*
5 *the only costs that may be incurred by a local agency or school*
6 *district will be incurred because this act creates a new crime or*
7 *infraction, eliminates a crime or infraction, or changes the penalty*
8 *for a crime or infraction, within the meaning of Section 17556 of*
9 *the Government Code, or changes the definition of a crime within*
10 *the meaning of Section 6 of Article XIII B of the California*
11 *Constitution.*

12 ~~SECTION 1. Section 288 of the Penal Code is amended to~~
13 ~~read:~~

14 ~~288. (a) Any person who willfully and lewdly commits any~~
15 ~~lewd or lascivious act, including any of the acts constituting other~~
16 ~~crimes provided for in Part 1, upon or with the body, or any part~~
17 ~~or member thereof, of a child who is under the age of 14 years,~~
18 ~~with the intent of arousing, appealing to, or gratifying the lust,~~
19 ~~passions, or sexual desires of that person or the child, is guilty of~~
20 ~~a felony and shall be punished by imprisonment in the state prison~~
21 ~~for three, six, or eight years.~~

22 ~~(b) (1) Any person who commits an act described in subdivision~~
23 ~~(a) by use of force, violence, duress, menace, or fear of immediate~~
24 ~~and unlawful bodily injury on the victim or another person, is~~
25 ~~guilty of a felony and shall be punished by imprisonment in the~~
26 ~~state prison for 10 years to life.~~

27 ~~(2) Any person who is a caretaker and commits an act described~~
28 ~~in subdivision (a) upon a dependent person by use of force,~~
29 ~~violence, duress, menace, or fear of immediate and unlawful bodily~~
30 ~~injury on the victim or another person, with the intent described~~
31 ~~in subdivision (a), is guilty of a felony and shall be punished by~~
32 ~~imprisonment in the state prison for three, six, or eight years.~~

33 ~~(c) (1) Any person who commits an act described in subdivision~~
34 ~~(a) with the intent described in that subdivision, and the victim is~~
35 ~~a child of 14 or 15 years, and that person is at least 10 years older~~
36 ~~than the child, is guilty of a public offense and shall be punished~~
37 ~~by imprisonment in the state prison for one, two, or three years,~~
38 ~~or by imprisonment in a county jail for not more than one year. In~~
39 ~~determining whether the person is at least 10 years older than the~~

1 child, the difference in age shall be measured from the birth date
2 of the person to the birth date of the child.

3 (2) Any person who is a caretaker and commits an act described
4 in subdivision (a) upon a dependent person, with the intent
5 described in subdivision (a), is guilty of a public offense and shall
6 be punished by imprisonment in the state prison for one, two, or
7 three years, or by imprisonment in a county jail for not more than
8 one year.

9 (d) In any arrest or prosecution under this section or Section
10 288.5, the peace officer, district attorney, and the court shall
11 consider the needs of the child victim or dependent person and
12 shall do whatever is necessary, within existing budgetary resources,
13 and constitutionally permissible to prevent psychological harm to
14 the child victim or to prevent psychological harm to the dependent
15 person victim resulting from participation in the court process.

16 (e) Upon the conviction of any person for a violation of
17 subdivision (a) or (b), the court may, in addition to any other
18 penalty or fine imposed, order the defendant to pay an additional
19 fine not to exceed ten thousand dollars (\$10,000). In setting the
20 amount of the fine, the court shall consider any relevant factors;
21 including, but not limited to, the seriousness and gravity of the
22 offense, the circumstances of its commission, whether the
23 defendant derived any economic gain as a result of the crime, and
24 the extent to which the victim suffered economic losses as a result
25 of the crime. Every fine imposed and collected under this section
26 shall be deposited in the Victim-Witness Assistance Fund to be
27 available for appropriation to fund child sexual exploitation and
28 child sexual abuse victim counseling centers and prevention
29 programs pursuant to Section 13837.

30 If the court orders a fine imposed pursuant to this subdivision,
31 the actual administrative cost of collecting that fine, not to exceed
32 2 percent of the total amount paid, may be paid into the general
33 fund of the county treasury for the use and benefit of the county.

34 (f) For purposes of paragraph (2) of subdivision (b) and
35 paragraph (2) of subdivision (c), the following definitions apply:

36 (1) "Caretaker" means an owner, operator, administrator,
37 employee, independent contractor, agent, or volunteer of any of
38 the following public or private facilities when the facilities provide
39 care for elder or dependent persons:

1 ~~(A) Twenty-four hour health facilities, as defined in Sections~~
2 ~~1250, 1250.2, and 1250.3 of the Health and Safety Code.~~

3 ~~(B) Clinics.~~

4 ~~(C) Home health agencies.~~

5 ~~(D) Adult day health care centers.~~

6 ~~(E) Secondary schools that serve dependent persons and~~
7 ~~postsecondary educational institutions that serve dependent persons~~
8 ~~or elders.~~

9 ~~(F) Sheltered workshops.~~

10 ~~(G) Camps.~~

11 ~~(H) Community care facilities, as defined by Section 1402 of~~
12 ~~the Health and Safety Code, and residential care facilities for the~~
13 ~~elderly, as defined in Section 1569.2 of the Health and Safety~~
14 ~~Code.~~

15 ~~(I) Respite care facilities.~~

16 ~~(J) Foster homes.~~

17 ~~(K) Regional centers for persons with developmental disabilities.~~

18 ~~(L) A home health agency licensed in accordance with Chapter~~
19 ~~8 (commencing with Section 1725) of Division 2 of the Health~~
20 ~~and Safety Code.~~

21 ~~(M) An agency that supplies in-home supportive services.~~

22 ~~(N) Board and care facilities.~~

23 ~~(O) Any other protective or public assistance agency that~~
24 ~~provides health services or social services to elder or dependent~~
25 ~~persons, including, but not limited to, in-home supportive services,~~
26 ~~as defined in Section 14005.14 of the Welfare and Institutions~~
27 ~~Code.~~

28 ~~(P) Private residences.~~

29 ~~(2) “Board and care facilities” means licensed or unlicensed~~
30 ~~facilities that provide assistance with one or more of the following~~
31 ~~activities:~~

32 ~~(A) Bathing.~~

33 ~~(B) Dressing.~~

34 ~~(C) Grooming.~~

35 ~~(D) Medication storage.~~

36 ~~(E) Medical dispensation.~~

37 ~~(F) Money management.~~

38 ~~(3) “Dependent person” means any person who has a physical~~
39 ~~or mental impairment that substantially restricts his or her ability~~
40 ~~to carry out normal activities or to protect his or her rights,~~

1 including, but not limited to, persons who have physical or
2 developmental disabilities or whose physical or mental abilities
3 have significantly diminished because of age. “Dependent person”
4 includes any person who is admitted as an inpatient to a 24-hour
5 health facility, as defined in Sections 1250, 1250.2, and 1250.3 of
6 the Health and Safety Code.

7 (g) Paragraph (2) of subdivision (b) and paragraph (2) of
8 subdivision (c) apply to the owners, operators, administrators,
9 employees, independent contractors, agents, or volunteers working
10 at these public or private facilities and only to the extent that the
11 individuals personally commit, conspire, aid, abet, or facilitate any
12 act prohibited by paragraph (2) of subdivision (b) and paragraph
13 (2) of subdivision (c).

14 (h) Paragraph (2) of subdivision (b) and paragraph (2) of
15 subdivision (c) do not apply to a caretaker who is a spouse of, or
16 who is in an equivalent domestic relationship with, the dependent
17 person under care.